

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of the Arbitration between

ONEBEACON AMERICA INSURANCE CO.,

No. 12-cv-5043 (CS/LMS)

Petitioner,

-and-

AFFIDAVIT OF  
JOHN F. FINNEGAN

SWISS REINSURANCE AMERICA CORP.,

Respondent.

STATE OF NEW YORK )

Ss.:

COUNTY OF NEW YORK )

JOHN F. FINNEGAN, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and a member of Chadbourne & Parke LLP, counsel for petitioner, OneBeacon America Insurance Company ("OneBeacon").

2. I submit this affidavit in opposition to respondent's motion to dismiss, to transfer venue or, in the alternative, to enjoin an arbitration. I also submit this affidavit in further support of OneBeacon's application seeking a court order appointing an arbitrator. Unless otherwise indicated, whether by word or context, I have personal knowledge of the facts set forth below.

3. Exhibit 5 hereto (continuing the numbering begun in my July 18, 2012 affidavit) consists of two letters, one dated August 27, 1971 and the other dated March 3, 1972, from Employers Commercial Union Companies (a predecessor of OneBeacon) to North America

Reinsurance Corporation (a predecessor of respondent, Swiss Reinsurance America Corp. ("Swiss Re")).

4. Exhibit 6 hereto is Swiss Re's May 5, 2008 Pre-Hearing Position Statement filed in the earlier arbitration between OneBeacon and Swiss Re (the "Prior Arbitration").

5. Exhibit 7 hereto is Swiss Re's March 5, 2009 Pre-Hearing Brief filed in the Prior Arbitration.

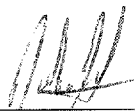
6. Exhibit 8 hereto is an October 18, 2008 panel order denying Swiss Re's motion for summary adjudication in the Prior Arbitration.

7. Exhibit 9 hereto is a May 13, 2011 email and accompanying letter from James McKay, on behalf of OneBeacon, to Paul Burgess, on behalf of Swiss Re.

8. I understand, based upon conversations others in my office have had with OneBeacon and with Pepper Hamilton, LLP, OneBeacon's counsel in the Prior Arbitration, that OneBeacon and Swiss Re each submitted a proposed award to the arbitration panel in the Prior Arbitration. OneBeacon and Pepper Hamilton are unable to locate a copy of Swiss Re's proposed award in their files. My office asked Simpson Thacher & Bartlett LLP ("Simpson Thacher"), Swiss Re's counsel in this proceeding, to obtain a copy of Swiss Re's proposed award from either Swiss Re or from Choate Hall & Stewart LLP ("Choate"), Swiss Re's counsel in the Prior Arbitration. Simpson Thacher advised us that it had made inquiries of Swiss Re, which was not able to locate a copy of the proposed award. We then reiterated our request that Simpson Thacher reach out to Choate. Simpson Thacher has not yet responded to our further inquiry. OneBeacon will seek to subpoena Choate to obtain a copy of the proposed award, whether electronically stored or otherwise, if this Court deems it necessary to evaluate the merits of Swiss Re's res judicata defense as a potential bar to a second arbitration.

9. To my understanding, Swiss Re's proposed award in the Prior Arbitration sought relief broader than the panel ultimately awarded to Swiss Re. Swiss Re apparently asked for an award stating that OneBeacon could not aggregate non-products asbestos claims as a single occurrence under the terms of the parties' reinsurance contract using any methodology.

10. If this Court were to give serious consideration to Swiss Re's request for an injunction, OneBeacon would first want the opportunity to conduct discovery (directed, in part, at obtaining Swiss Re's proposed arbitral award) and thereafter to participate in an evidentiary hearing, one purpose of which would be to evaluate whether Swiss Re had demonstrated (as Swiss Re is required to do in order to obtain an injunction) that the issues in the Prior Arbitration and the current arbitration are identical.



John F. Finnegan

Sworn to before me on  
September 11, 2012.



Notary Public

KAREN E. FOSTER  
Notary Public, State of New York  
No. 01-F04721848  
Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires FEBRUARY 28, 20